

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA,

v.

Case No. 2:05cr119-F

DON EUGENE SIEGELMAN and
RICHARD M. SCRUSHY,
Defendants.

MOTION TO UNSEAL

COME NOW Defendants Don Eugene Siegelman and Richard M. Scrushy, by and through undersigned counsel of record and move this Court for entry of an Order unsealing all pleadings filed by any party relating to the recusal of United States Magistrate Judge Charles S. Coody, with the exception of exhibits filed by any party in support of these pleadings. In support of this request, Defendants respectfully show this Court the following:

1. Defendants Siegelman and Scrushy initially filed motions to recuse Judge Coody on November 3, 2005, (Doc 33) and November 4, 2005, (Doc 34), respectively. These motions were not filed under seal, and are a part of the public record in this case.
2. On November 9, 2005, the Government filed its response to these motions. (Doc 38.) This response was likewise not filed under seal.
3. On November 10, 2005, Judge Coody filed a 20-page "Order and Memorandum Opinion on Recusal." (Doc 41.) This Order was not filed under seal.

4. A status conference was held before the District Court on November 16, 2005. During that status conference, Defendants requested only that they be permitted to file certain exhibits under seal in support of their appeal from Judge Coody's Order. This Court directed Defendants to file a motion for reconsideration of Judge Coody's Order, and further directed that all motions relating to recusal be filed under seal.

5. On November 23, 2006, both Defendants filed motions for reconsideration, which included certain exhibits (FBI 302s) in support of their motions. (Docs 56, 58.) As directed, these motions and attached exhibits were filed under seal.

6. On December 21, 2005, the Government filed its response to Defendants' motions for reconsideration. (Doc 73) Attached to this response as exhibits were extensive excerpts from grand jury testimony of a number of potential Government witnesses in this matter. (*Id.*) As directed by this Court, the Government also filed its response and exhibits under seal.

7. On January 6, 2006, Judge Coody entered an Order denying Defendants' motions for reconsideration. (Doc 84.) This Order was not filed under seal.

8. Unfortunately, this Court's direction that all motions be filed under seal, rather than the more limited request by Defendants that only exhibits be sealed, has created an unintended appearance that there is some need to litigate the question of recusal in secret. *See* "Signed, Sealed and Secret," The Birmingham News, January 7, 2006. A copy of this editorial is attached to this Motion as EXHIBIT A and hereby incorporated.

9. As demonstrated by the editorial, the sealing of the motions and response have generated public speculation as to the existence of reasons for Judge Coody's recusal in addition to the reasons discussed in the previously-filed unsealed motions. Additionally,

the sealed status of the motions and response, in conjunction with the wording of Judge Coody's January 3, 2006 Order denying reconsideration, (Doc 84), has generated speculation that Defendants' lawyers may have "overstepped their bounds" by filing these motions. Such speculation is unfair to Judge Coody, to the Defendants Siegelman and Scrushy, and to their lawyers.

10. Defendants respectfully submit that there is no legal or policy reason or need that the motions or responses relating to this issue be filed under seal. Defendants do, however, continue to respectfully submit that certain supporting materials filed by Defendants (FBI 302s) should remain under seal, as well as the supporting materials filed by the Government (grand jury transcripts). All of these materials relate to the investigatory stages of this case and there is good cause for these materials not to be released prior to trial in this matter, if indeed they become part of the public record at that time.

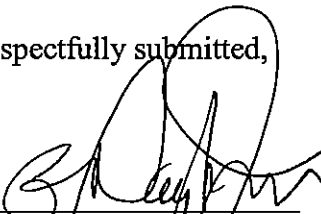
11. For all of these reasons, Defendants are respectfully requesting that this Court reconsider the scope of its direction that all pleadings relating to this issue be filed under seal and enter an Order unsealing all such pleadings with the exception of the exhibits attached to the pleadings consisting of FBI 302s and grand jury transcripts. Defendants respectfully submit that such a step will quell unnecessary and unjustified speculation as to the contents of these pleadings and will serve this Court's interest in permitting legitimate public access to the proceedings in this case.

WHEREFORE, Defendants respectfully pray that this Court enter an Order directing the Clerk to unseal all pleadings relating to recusal filed by any party, but

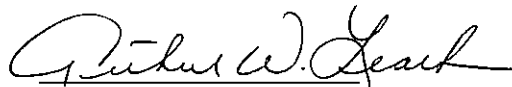
requiring the Clerk to maintain all previously filed exhibits under seal, directing the parties to file any subsequent pleadings on this issue as part of the public record, and for such other and further relief as this Court may deem just and proper.

This 12th day of January, 2006.

Respectfully submitted,

/s/ 

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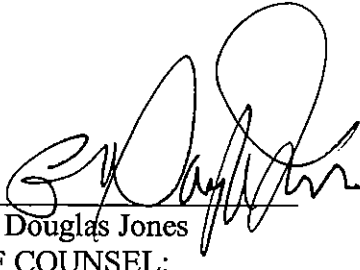
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of January, 2006, I electronically filed the foregoing "Motion to Unseal" with the Clerk of the Court using the CM/ECF system which will send notification of such to counsel of record.

/s/


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